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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
)
Application of)
)
Capitol Radiotelephone Inc.)
d.b.a. Capitol Paging)
1420 Kanawha Blvd. E.)
Charleston, West Virginia 25301)
)
For a Private Carrier Paging Facility)
on the Frequency 152.480 MHz in)
Huntington/Charleston, West Virginia)
)
and)
)
Imposition of Forfeiture Against)
)
Capitol Radiotelephone Inc.)
d.b.a. Capitol Paging)
1420 Kanawha Blvd. E.)
Charleston, West Virginia 25301)
)
Former Licensee of Station WNSX-646)
in the Private Land Mobile Radio)
Services)
)
and)
)
Revocation of License of)
)
Capitol Radio Telephone Inc.)
d.b.a. Capitol Paging)
1420 Kanawha Blvd. E.)
Charleston, West Virginia 25301)
)
Licensee of Station WNDA-400 in the)
Private Land Mobile Radio Services)
)
and)
)
Revocation of License of)
)
Capitol Radio Telephone Inc.)
d.b.a. Capitol Paging)
1420 Kanawha Blvd. E.)
Charleston, West Virginia 25301)
)
Licensee of Station WNNW-636 in the)
Private Land Mobile Radio Services)

PR Docket No. 93-231

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and)
)
Revocation of License of)
)
Capitol Radiotelephone Company, Inc.)
1420 Kanawha Boulevard East)
Charleston, West Virginia 25301)
)
Licensee of Station KWU-373 in the)
Public Mobile Radio Service)
)
and)
)
Revocation of License of)
)
Capitol Radiotelephone Company, Inc.)
P. O. Box 8305)
South Charleston, West Virginia 25303)
)
Licensee of Station KUS-223 in the)
Public Mobile Radio Service)
)
and)
)
Revocation of License of)
)
Capitol Radiotelephone Co., Inc.)
1420 Kanawha Boulevard East)
Charleston, West Virginia 25301)
)
Licensee of Station KQD-614 in the)
Public Mobile Radio Service)
)
and)
)
Revocation of License of)
)
Capitol Radiotelephone Company, Inc.)
1420 Kanawha Boulevard)
East Charleston, West Virginia 25301)
)
Licensee of Station KWU-204 in the)
Public Mobile Radio Service)

To: Administrative Law Judge Joseph Chachkin

BRIEF IN SUPPORT OF JOINT MOTION FOR
APPROVAL OF CONSENT AGREEMENT

The Chief, Private Radio Bureau (PRB), by his attorney, submits this brief in support of the Joint Motion for Approval of Consent Agreement filed

in this matter on October 28, 1993 by PRB, Capitol Radiotelephone, Inc. (Capitol) and RAM Technologies Inc. (RAM).

1. Background. By Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing (HDO) the Commission (1) designated the application of Capitol Radiotelephone Inc. for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia for hearing; (2) ordered Capitol to show cause why the radio station licenses set forth in the caption should not be revoked, and (3) provided Capitol with an opportunity for hearing on whether an Order of Forfeiture should be issued against Capitol. The HDO was based on allegations concerning Capitol's application for and operation of private carrier paging (PCP) station WNSX646 in the Private Land Mobile Radio Services, and Capitol's responses to Commission inquiries regarding its application for and operation of station WNSX646. The HDO included the issue of whether Capitol has the requisite basic character qualifications to be a Commission licensee. The Commission made PRB and RAM parties to the proceeding.

2. Capitol, PRB and RAM all filed notices of appearance in this matter. A hearing was scheduled for January 4, 1994 in Washington, D.C. A prehearing conference was scheduled for October 29, 1993. Pursuant to the Order Prior to Prehearing Conference released September 27, 1993 counsel for all parties met on October 13, 1993 to confer for the purpose of exploring proposed discovery and the stipulation of uncontested facts.

3. Subsequent to the release of the HDO, PRB and Capitol initiated negotiations concerning a possible Consent Agreement. They reached such an accord, and RAM concurred in it. The Consent Agreement is intended to resolve the above-captioned action, and is contingent upon the Presiding Judge's

approval of termination of this proceeding pursuant to its terms and conditions.

4. Capitol has agreed to either cancel the license for station WNSX646 or to withdraw its application for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia, whichever is appropriate. Capitol has also agreed not to obtain a license under its or any other name for a private carrier paging facility operating on shared frequencies in West Virginia, Ohio and Kentucky for a period of five years. Additionally, Capitol has agreed to admit to violations of Section 90.405(a)(3) [transmitting communications for testing purposes in a manner such that the tests were not kept to a minimum and every measure was not taken to avoid harmful interference] and Section 90.425(b)(2) [identifying transmissions by Morse Code at a rate less than 20-25 words per minute] and to pay a forfeiture in the amount of \$10,000 for these violations. Further, Capitol has agreed to make a separate voluntary contribution of \$17,500 to the United States Treasury. Capitol has made assurances that as a Commission licensee it will in the future comply with Commission Rules and the Communications Act of 1934, as amended.

5. PRB agreed to a termination of this matter. PRB further agreed to mitigation of the forfeiture to be assessed in this matter to \$10,000. PRB, Capitol and RAM agreed that except with respect to Capitol's admission of violations of Sections 90.405(a)(3) and 90.425(b)(2), no findings or conclusions would be reached upon the merits of this matter.

6. PRB, Capitol and RAM submitted that approval of the Consent Agreement in a Consent Order issued by the Presiding Judge would be in the public interest. This would resolve the issues set forth in the HDO and

eliminate the need for a hearing in this proceeding. Termination of this proceeding would speed its resolution while serving the Commission's enforcement needs. It would also result in considerable saving of both public and private resources, an important concern. If the Consent Agreement were approved by Consent Order, no further enforcement or public benefit would be gained from continuation of this proceeding.

7. A prehearing conference was held in this matter on October 29, 1993. It became clear in the prehearing conference that the Presiding Judge was of the preliminary view that Section 1.93(b) of the Commission's Rules¹ and Talton Broadcasting Company, 67 FCC 2d 1594 (1978) (hereinafter Talton) do not allow him the discretion to issue a Consent Order approving the Consent Agreement the parties have submitted in this matter. In the prehearing conference the Presiding Judge granted PRB the opportunity to brief this question. For the reasons stated below, PRB believes that neither Section 1.93(b) of the Rules nor Talton act as a bar to the Presiding Judge's authority to exercise his discretion to issue a Consent Order in this case.

8. Introduction. Section 1.93(b) of the Rules provides in pertinent part: "Consent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license (see 47 U.S.C. 308 and 309)." This general principle was articulated in Talton and has been upheld in its progeny.² The controlling theory in Talton is that the Commission's designation of a hearing with respect to a pending application

¹ 47 C.F.R. § 1.93(b).

² See, e.g., Tidewater Radio Show, Inc., 75 FCC2d 670, 676 (1980) and Trustees of the University of Penn.; WXPB (FM), 69 FCC 2d 1394, 1430 (1978).

inherently indicates that the Commission could not initially make the public interest determination necessary to grant that application.³

9. Like all rules of general applicability, however, Section 1.93(b) has been subject to a number of limited exceptions. These exceptions neither expressly overrule Section 1.93(b) or Talton nor distinguish them, but, at every level of the Commission, they exist nonetheless. They include, but are not limited to: (1) cases with designated character qualification issues settled by Consent Order approving grant of a license followed by transfer or assignment;⁴ (2) cases with designated character qualification issues settled by Consent Order based upon the Commission's policy, first articulated in Allegan County Broadcasters, Inc., 83 FCC2d 371 (1980) (Allegan), that a conclusive finding need not be made regarding basic character qualifications to approve settlement agreements that involve mutually exclusive applications;⁵ and (3) cases with designated character qualification issues settled by Consent Order where the Presiding Judge, because of the terms and conditions of the consent agreement, has apparent authority to reopen the case or to find the respondent in contempt of the Consent Order if the respondent

³ This is why, as a corollary, we take the position that should Capitol withdraw its pending application, or had the Joint Motion to Change Issue been granted, no Section 1.93(b) or Talton issue would remain.

⁴ Consent agreements and settlements of this nature were generally prohibited by earlier case law similar to Talton. See Jefferson Radio, 340 F.2d 781 (D.C. Cir. 1964) (Jefferson Radio). Certain recognized exceptions to Jefferson Radio, however, evolved.

⁵ In Allegan (at 373) the Commission stated: "We believe the public interest can be adequately protected by other Commission procedures where unresolved substantial and material character allegations remain against a dismissing applicant. If the dismissing applicant is an existing Commission licensee, those allegations can be revisited in a license renewal, transfer or assignment proceeding. If the dismissing applicant is not an existing Commission licensee, the allegations can be revisited in a future proceeding should the applicant again seek to obtain a Commission license."

continues to engage in the violative behavior that engendered designation of the character qualification issue.⁶

10. Settlements based on exceptions to Jefferson Radio. Before Talton was decided, Jefferson Radio barred settlement by transfer or assignment of cases that had been designated for hearing if they included character issues.⁷ Over time, however, a limited number of exceptions to Jefferson Radio allowing settlement by transfer or assignment of the designated licenses evolved. See Coalition for the Preservation of Hispanic B/Casting v. FCC, 893 F.2d 1349, 1358-1360 (D.C. Cir. 1990) (Coalition).⁸ For purposes of this proceeding the most notable of these exceptions permits settlement by grant and transfer of a license despite the existence of designated character issues if the transferor incurs a substantial monetary penalty.⁹ Coalition, supra, at

⁶ The first two lines of cases have bearing by way of analogy in explaining the legitimacy of the third line of cases. The third line of cases, of course, are particularly relevant here.

⁷ Arguably the primary reason Jefferson Radio generally barred such settlements was to prevent an applicant or licensee without the requisite basic character qualifications to profit from the transfer or assignment of a license. Here Capitol is prepared to surrender its PCP license without transfer or assignment (and without profit) and withdraw from the PCP business.

⁸ For instance, the Commission has found compelling equitable circumstances in cases where the assignor is disabled or where the licensee's assets are held by a receiver in bankruptcy for the benefit of innocent creditors. Coalition, supra, at 1359-1360.

⁹ In this case Capital is prepared to pay a substantial sum in the form of a forfeiture and a voluntary contribution to the United States Treasury.

1360.¹⁰¹¹ Each of the clearly defined exceptions to Jefferson Radio technically run afoul of the provisions of 47 C.F.R. § 1.93(b) and contravene the provisions of Talton, if they were broadly applied. Rather than being violative of the Communications Act of 1934, as amended (the Act) or Title 47 of the Code of Federal Regulations (the Rules), these cases are instead considered legitimate exceptions to the general rule prohibiting settlement when there are designated character qualification issues.

11. Settlements involving mutually exclusive applications. In accord with the tenets of Allegan, it is not uncommon for mutually exclusive applicants to present settlements for approval in cases that have been designated for hearing that include issues of basic character qualification or issues that bear upon character such as misrepresentation or lack of candor. Where appropriate, settlements of this nature are generally approved. See, e.g., Christina Communications, FCC 87M-2048 (Sept. 1, 1987). Full or partial settlements of this type where all or some mutually exclusive applicants agree

¹⁰ Coalition, *supra*, at 1360. In Coalition the D.C. Circuit Court of Appeals cites the following cases for this proposition: RKO General Inc. (KHJ-TV), 3 FCC Rcd 5057, 5062 (1988), A.S.D. Answering Service, Inc., 1 FCC Rcd 753, 754 (1986) (ASD) and George E. Cameron Jr. Communications, 56 Rad.Reg.2d 825, 828 (1984). In the Order Designating Applications for Hearing in ASD, 47 Fed.Reg. 40896 (Sept. 16, 1982), the Commission found there were serious questions concerning whether Graphic Scanning Corp. (Graphic) was the real party in interest behind the applicants, and whether Graphic and applicants were candid in their representations to the Commission with respect to their relationship.

¹¹ In ASD, one of the three cases cited for this proposition by Coalition, the Commission originally refused Graphic's motion to establish consent procedures on the basis that Talton generally precluded this action. See ASD, 56 Rad.Reg.2d 1518, 1520 (1984). Two years later, after ALJ findings against Graphic's character qualifications, the Commission settled the case, in part by vacating the ALJ's findings in accord with the settlement proposed in the proceeding. ASD, 3 FCC Rcd, 753, 754 (1986). Although Graphic voluntarily dismissed its low band applications, it remained a Commission licensee/permittee.

to dismiss all their applications and form a settlement group would also appear to technically run afoul of the provisions of 47 C.F.R. § 1.93(b) and contravene the provisions of Talton, if they were broadly applied. Rather than being violative of the Act or the Rules, these cases, too, are instead considered legitimate exceptions to the general rule prohibiting settlement when there are designated character qualification issues.¹²

12. Settlements permitting ALJ oversight. PRB has entered into a number of Consent Agreements that have been approved by Consent Orders of Presiding Judges in hearing cases that included designated character qualification issues.¹³ Rather than being violative of the Act or the Rules, these cases also represent legitimate exceptions to the general rule prohibiting settlement when there are designated character qualification issues.¹⁴ These Consent Orders reflect a non-articulated but equally relevant exception to Section 1.93(b) and Talton: namely, that the Presiding Judge has

¹² It is significant that this exception has been broadly applied in the area of cellular radio. It would appear that, at least inferentially, this exception has found acceptance in part because the public interest in making a valuable non-broadcast service available to the public may at times outweigh character considerations in a manner not possible with broadcast licensees where an element of public trust comes into play. Approval of the Consent Order in this matter would leave Capitol as a Commission licensee providing common carrier paging services to the public.

¹³ See, e.g., Consent Order, Sandra V. Crane and Charles P. Pascal, PR Docket No. 92-119, FCC 92M-987 (October 5, 1992); Consent Order, Jerry E. Gastil, PR Docket No. 89-304, FCC 89M-2391 (October 2, 1989); Consent Order, Robert J. King, PR Docket No. 86-8, FCC 86M-2214 (July 9, 1986); and Consent Order, Aaron Ambulette Service, Inc., PR Docket No. 81-903, FCC 82D-17 (March 11, 1982).

¹⁴ The body of law represented by these Consent Orders is analogous to the body of law represented by exceptions to Jefferson Radio or settlements in accord with Allegan. Neither the exceptions to Jefferson Radio and their progeny nor settlements in accord with Allegan expressly overturn or distinguish Section 1.93 of the Rules or Talton. Nonetheless, they are still legitimate exceptions to both. So, too, are the Consent Orders referenced herein.

discretion to approve a Consent Agreement in a case with designated character qualification issues if the Consent Order, in accord with that Consent Agreement, provides the Presiding Judge the discretion to later address the facts and circumstances that gave rise to the character issues should similar conduct reoccur. The Presiding Judge has the inherent discretion to reopen the terminated case or to consider contempt against the respondent if the respondent violates the terms of the Consent Order. Each of the Consent Orders referenced at note 13 included provisions that inherently gave the Presiding Judge the latitude to address behavior of the type that gave rise to the designated character qualification issues at a later time, should that become necessary.

13. Indeed, the Consent Order approving the Consent Agreement between Robert J. King and PRB terminating PR Docket No. 86-8 was issued only after on the record discussion of the provisions of Section 1.93. It appears from the text of that discussion¹⁵ that the Presiding Judge believed that a consent agreement whereby the respondent agrees not to engage in any future violations met concerns regarding Section 1.93. Presumably, this was because this gave the Presiding Judge the latitude to address this matter again should it become germane.

14. Alternative Dispute Resolution (ADR). It should be noted that subsequent to Congressional passage of the Administrative Dispute Resolution Act, 5 U.S.C. §§ 571 et seq., the Commission codified its recent adoption of an initial policy statement that supports and encourages the use of alternative dispute resolution procedures in its administrative proceedings

¹⁵ The transcript of the prehearing conference that took place on June 20, 1986 in Docket No. 86-8 is attached.

and proceedings in which the Commission is a party. See 47 C.F.R. § 1.18(a). This emphasis upon ADR is a recent phenomenon that PRB believes should be taken into account in evaluating the applicability of precedent that would, arguably, deter ADR or act as a disincentive to use of ADR. In addition, to the extent that legitimate exceptions have already been taken to precedent that would preclude negotiation and settlement of administrative proceedings, the Commission's encouragement of the use of ADR would appear to support exercise of the Presiding Judge's discretion to take advantage of those exceptions where appropriate.

15. Conclusions. PRB is of the view that voluntary withdrawal of Capitol's PCP application should negate any Talton concerns. This is because the gravamen of Talton is the performance of the Commission's duty under Sections 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 308 and 309. See Talton, supra, at 1598. Withdrawal of Capitol's PCP application renders any such determination unnecessary. Indeed, because Talton couches its discussion of Section 1.93 of the Rules, 47 C.F.R. § 1.93, in the same context, Talton, id., PRB contends that withdrawal of Capitol's PCP application negates the applicability of Section 1.93 to this matter as well.

16. Capitol's willingness to incur a substantial monetary penalty as part of the Consent Agreement makes this matter analogous to the exceptions to Jefferson Radio. There are no public trust issues to balance against character qualification issues, as broadcast licenses are not involved. Capitol's withdrawal of its PCP applications is analogous to the penalty that arguably could be imposed for a finding of misrepresentation or lack of candor

that did not include willful intent to deceive.¹⁶ Capitol's willingness to make representations that it will not engage in violative conduct makes this matter analogous to King. The Consent Agreement has been fashioned in a manner that was found acceptable in light of Section 1.93 concerns in King, and provides the Presiding Judge the latitude to address any later conduct violative of the Consent Agreement and the proposed Consent Order that would bear upon character qualifications. Approval of a Consent Order in this proceeding would not differ from Consent Orders approved in other proceedings to which PRB was a party.

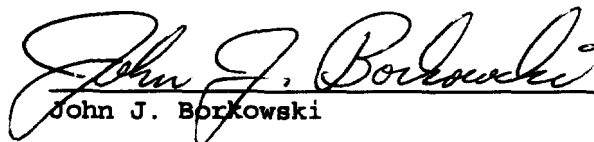
In light of the foregoing, the Chief, Private Radio Bureau, believes that the Presiding Judge has the discretion to favorably consider the Joint Motion for Approval of Consent Agreement that the parties filed on October 28, 1993. The Chief, Private Radio Bureau, urges the Presiding Judge to exercise this discretion by granting the Joint Motion for Approval of Consent Agreement and issuing a Consent Order terminating this proceeding.

Respectfully Submitted,

Ralph A. Haller

Chief, Private Radio Bureau

By:


John J. Borkowski

November 5, 1993

Attachment

¹⁶ See, e.g., KOED, Inc., 68 Rad.Reg.2d 1074 (1991), 67 Rad.Reg.2d 781 (1990). Compare FCC v. WOKO, Inc., 329 U.S. 223 (1946) with Washington Association for Television and Children (WATCH) v. FCC, 50 Rad.Reg.2d 161 (D.C. Cir. 1981).

CERTIFICATE OF SERVICE

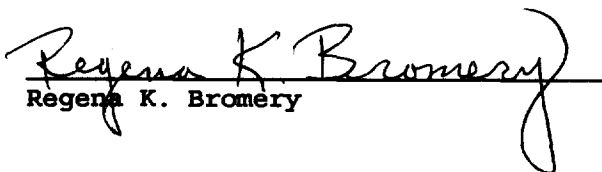
I, Regena K. Bromery, a secretary with the Private Radio Bureau, hereby certify that on this 5th day of November, 1993, copies of the foregoing Brief in Support of Joint Motion for Approval of Consent Agreement were served, by first-class U.S. mail, upon the following:

Hon. Joseph Chachkin *
Administrative Law Judge
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Regena K. Bromery

* denotes hand delivery

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

June 20, 1986

-----x
:
In the Matter of: : Docket Number 86-8
:
5 REDFORD, MICHIGAN :
:
6 -----x

The above-entitled matter came on for
conference, pursuant to notice, before Judge Joseph
Chachkin, Presiding Administrative Law Judge, at 2000 L
Street, N.W., Courtroom Number 1, Washington, D. C. at
9:00 a.m.

APPEARANCES:

On Behalf of Robert J. King

James R. Bayes, Esq.
Wiley & Rain
1776 K Street, N.W.
Washington, D. C. 20006

On Behalf of Private Radio Bureau

John J. Burkowski and Thomas D. Fitz-Gibbon
Federal Communications Commission
1919 M. Street, N.W.
Washington, D. C. 20554

P R O C E E D I N G S

JUDGE CHACHKIN: May I have the appearances on behalf of the parties -- on behalf of Robert J. King?

MR. BAYES: James Bayes.

JUDGE CHACHKIN: On behalf of the Chief, Private Radio Bureau?

MR. BURKOWSKI: John Burkowski.

MR. FITZ-GIBBON: And Thomas D. Fitz-Gibbon.

JUDGE CHACHKIN: Would someone close the back door, please?

The purpose of this conference is to consider the motion to terminate the proceeding which is filed by the Chief of the Private Radio Bureau.

The motion states in its first paragraph that the Bureau requests that this proceeding be terminated on the basis of the attached agreement.

Now my dilemma is that I have no authority to approve the agreement. I have authority to approve a motion for a summary decision, or that there was a consent to request for a consent order under Section 1.93 to Section 1.95 of the Rules or by issuing an initial decision.

Other than that, I have no authority to

1 terminate a proceeding unless the merits have been
2 considered and disposed of.

3 And here it is apparent that based on
4 my reading of the agreement, that the -- there has neither
5 been an admission by Mr. King or that he has violated
6 any rules nor is the Bureau apparently conceded that there
7 was no violation of the rules.

8 In a nutshell, what I am saying is,
9 that my view of the matter is that I will neither approve
10 nor disapprove the agreements since I don't have any
11 authority.

12 However, I further note that the Bureau
13 is prosecuting this case, and they have the burden of
14 proceeding a proof under Section 312D of the Act.

15 And if the Bureau does not wish to
16 prosecute the case, then I am prepared to terminate the
17 proceeding since it is their burden to go forward, and
18 if they do not wish to go forward, then I will terminate
19 the proceeding on that basis.

20 But, again, I am making clear that I will
21 not approve or disapprove the agreement since the rules
22 or the Act do not give me authority to consider the
23 agreement.

24 MR. BAYES: Your Honor, could we have
25 a moment to confer off the record?

1 JUDGE CHACHKIN: Yes.

2 (Off the Record)

3 JUDGE CHACHKLIN: So I have made clear
4 my position--that I am prepared to terminate this
5 -- terminate this proceeding, but I also making clear
6 that I am neither approving or disapproving the Agreement--
7 that is, the parties are free if they wish to enter into
8 agreement, but I have no authority to approve or disapprove
9 it.

10 Mr. Burkowski?

11 MR. BURKOWSKI: Your Honor, the Bureau
12 first would want to state that it is prepared to go
13 forward and prosecute this matter absent some resolution
14 of this proceeding by you -- either by way of consent
15 decree decision or possibly this motion to terminate.

16 We would point out that the Private
17 Radio Bureau has in the past and -- and in several
18 circumstances used this conveyance a Motion to Terminate
19 to seek the resolution of Private Radio Bureau cases in
20 orders granting such motions to terminate have been issued
21 in the past specifically I refer the Keith J. Obermeyer
22 case which was PR Docket Number 85-28.

23 JUDGE CHACHKIN: And that was a --
24 an agreement was entered into?

25 Or it was just a motion to terminate the

1 proceeding?

2 MR. BURKOWSKI: There was a motion to
3 terminate the proceeding, Your Honor. In both of the
4 cases that I am aware of, those matters involved licensed
5 cancellation, however.

6 But, that -- I am only pointing out that
7 that type of conveyance was used --

8 JUDGE CHACHKIN: Well, as I say, I am
9 prepared to terminate the proceeding, but I am not prepared
10 to make any ruling on the agreement as I have no authority.

11 Now, is there any cases where Private
12 Radio cases where a termination has been based on an
13 agreement between the parties.

14 I am not talking about obviously a consent
15 order, since the rules do provide for a consent order
16 for a motion for summary decision, but I am not aware of
17 any -- there is nothing in the Commission's rules which
18 provide for this procedure.

19 MR. BAYES: Your Honor --

20 JUDGE CHACHKIN: -- which provide for
21 this procedure.

22 MR. BAYES: Your Honor?

23 JUDGE CHACHKIN: Yes?

24 MR. BAYES: May I inquire if --

25 I think both parties would be willing to

1 remold this as a consent decree request if necessary
2 from your point of view in order to terminate this.

3 Mr. King certainly doesn't have any
4 problem with that, and the way that I have viewed this
5 was certainly awfully similar to a consent decree or by
6 way of a consent decree although not styled as such.

7 JUDGE CHACHKIN: Well, in a consent decree,
8 the parties state that they will not -- while they don't
9 admit the having committed the violations, they do promise
10 that they will not in the future do the same thing, and
11 then the judge has authority if they do in the future,
12 to take action against them on the basis of the consent
13 decree.

14 So, it is entirely a different thing
15 than this document which makes no such provisions at all.

16 MR. BAYES: While I haven't discussed that
17 specifically with Mr. King, I certainly believe that he
18 would be willing to make such an undertaking.

19 Mr. King's position is that he hasn't
20 violated the rules, and he certainly has no intention of
21 doing so.

22 JUDGE CHACHKIN: Well, I don't have in
23 front of me a consent order -- what I have in front of
24 me is an agreement, and on the basis of this agreement,
25 I know nothing of the rules that gives me the authority to

1 prove an agreement of this nature which doesn't deal
2 with the merits, and there is no admission by the parties
3 and there is no statement that they won't do anything in
4 the future, so it can't be a consent decree.

5 MR. BURKOWSKI: We will endeavor to
6 restyle the submission to you, Your Honor, to be a
7 consent decree with all of the requisite requirements
8 under 1.93 and 1.95 and submit it to you.

9 JUDGE CHACHKIN: Now, the next question
10 is can you use a consent decree in this type of case
11 where there has been a -- I don't know -- I guess that
12 this case does not involve qualifications -- I know
13 consent decrees are normally used in common carrier
14 proceedings.

15 They have been used in cases of tariff
16 violations. Now whether -- is there any precedent for
17 using it in a Private Radio Bureau case?

18 MR. BURKOWSKI: Your Honor, I can cite
19 to three specific consent orders that have been issued
20 which in Private Radio Bureau cases involving revocation
21 proceedings.

22 They are the Ralph M. Ennis matter,
23 PR Docket Number 81-344 and 345.

24 JUDGE CHACHKIN: Well, I wouldn't have the
25 dockets anyway, but I assume that they don't have any

1 pika fisher or any or any FCC citations.

2 MR. BURKOWSKI: I don't have the citations
3 that they are available, Your Honor, but I do have copies
4 of the cases.

5 JUDGE CHACHKIN: Oh, you do have copies?

6 MR. BURKOWSKI: Yes, sir.

7 JUDGE CHACHKIN: What do you have --

8 MR. BURKOWSKI: Yes, sir, extra copies
9 if you wish them right now.

10 JUDGE CHACHKIN: All right, let's go
11 off the record. Let me just take a look at them.

12 (Off the record)

13 JUDGE CHACHKIN: Back on the record.

14 Based on my review of these consent orders,
15 apparently there have been instances where consent orders
16 pursuant to Section 1.93 have been -- have been utilized
17 in order to terminate -- dispose and terminate amateur
18 radio proceedings, and if I receive a consent order
19 similar to the ones which have been shown to me, then
20 I will also approve it.

21 MR. BURKOWSKI: Very well, Your Honor.

22 JUDGE CHACHKIN: And terminate the
23 proceeding.

24 MR. BURKOWSKI: We will endeavor to get
25 you such a document.

1 JUDGE CHACHKIN: Very well, I hope you --
2 perhaps -- all right -- perhaps it could be done before
3 the end of next week, since I will be going away for a
4 week after that, and I would like to finish it so that
5 I could cancel the hearing room in Detroit.

6 MR. BURKOWSKI: In light of this,
7 Your Honor, do you wish us still to comply with the
8 June 24th witness exhibit -- witness and exhibit exchange
9 date?

10 JUDGE CHACHKIN: Well, are you prepared
11 to -- can you state on behalf of your client that he
12 is prepared to enter into a consent decree similar to
13 these whereby he agrees not to engage in any future
14 violations?

15 MR. BAYES: Your Honor, I -- no, I can't
16 state that absolutely, because I haven't consulted with
17 him, and in that connection, though, I believe that your
18 Office has been informed of Mr. Thompson's death earlier
19 this --

20 JUDGE CHACHKIN: Yes.

21 MR. BURKOWSKI: And we would, I believe,
22 in any event, request an extension or postponement of
23 the procedural dates because a great of this case on
24 behalf of Mr. King was in Mr. Steve Thompson's head,
25 and it would take me a good bit of time to reconstruct

1 it and prepare.

2 JUDGE CHACKIN: Well, the hearing is set
3 for -- what -- July what-- is it? --

4 MR. BURKOWSKI: The 8th, I believe,
5 Your Honor.

6 JUDGE CHACHKIN: July 8th?

7 Well, I am reluctant to put it off --
8 put off the hearing -- because then I would have to put
9 it off until September, since I will be going away,
10 and I have got to get a hearing room.

11 But, hopefully, if the parties can
12 enter into a consent decree, that order -- that will
13 terminate the proceeding, and that will take care of
14 everything.

15 MR. BAYES: I believe that we can,
16 Your Honor. I just am not in a position to state it
17 absolutely.

18 JUDGE CHACHKIN: Well, why don't you
19 contact your client and notify me and the Bureau as soon
20 as you can, and as soon as I get the word, then if the
21 parties are willing -- Mr. King is willing to go with
22 the consent order, then I will cancel the dates --
23 or then the date for exchanging exhibits.

24 But, so -- you just let me know. And
25 as soon as I get the word, I will cancel the dates.

1 If Mr. King is willing to go along with the consent
2 order.

3 MR. BURKOWSKI: Thank you, Your
4 Honor.

5 MR. BAYES: We will advise you as soon
6 as possible.

7 JUDGE CHACHKIN: All right, all right.
8 We are now in recess.

9 (Whereupon, the conference was recessed
10 at 9:20 a.m.)

11 on June 20, 1986.
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